

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

10 BRANCH BANKING AND TRUST
11 COMPANY, a North Carolina banking
corporation,

CASE NO.: 2:12-cv-01462-JCM-VCF

12 Plaintiff,

13 || v.

14 PAHRUMP 194, LLC, a Nevada limited liability
15 company; TODD A. NIGRO, an individual;
16 JULI KOENTOPP, an individual; MICHAEL E.
17 NIGRO, an individual; MARGARET NIGRO,
18 an individual; NIGRO INFINITY PLUS, LLC, a
Nevada limited liability company; INFINITY
PLUS, LLC, a Nevada limited liability company;
NIGRO DEVELOPMENT, LLC, a Nevada
limited liability company; and DOES 1 through
10, inclusive.

FINDINGS OF FACTS, CONCLUSIONS OF LAW, AND JUDGMENT

Defendants.

21 Pursuant to order of the Court (Dkt. 116), Plaintiff Branch Banking and Trust Company,
22 by and through its counsel of record, hereby submits this Findings of Fact, Conclusions of Law,
23 and Judgment. 

DATED June 23, 2016.

Jerémy J. Nork, Esq.
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Holland & Hart LLP
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Attorneys for Plaintiff

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND JUDGMENT

Plaintiff seeks a deficiency judgment against Defendants arising from a commercial loan. On July 30, 2014, this Court entered partial summary judgment in favor of Plaintiff and against Defendants as to Defendants' liability for breach of contract ("Summary Judgment Order"). Dkt 50. As a result of the Summary Judgment Order, the issue that remained was the amount of any deficiency Defendants owed to Plaintiff under Nevada Revised Statute §40.451, *et. seq.*

On July 28, 2015, Magistrate Judge Ferenbach conducted an evidentiary hearing, as required by Nevada Revised Statute §40.457, to determine the fair market value of the subject property (identified as Nye County Assessor's Parcel Numbers 35-041-25, 35-041-37, 35-041-39, 35-041-63, 35-041-67, and 35-041-68)(“Property”) as of February 29, 2012, which was the date of the trustee’s sale. Judge Ferenbach held that the fair market value of the Property was \$5,867,500.00 and this Court adopted Judge Ferenbach’s report and recommendation as to the fair market value in its entirety (“FMV Order”). Dkts. 102 & 104.

Based on the Summary Judgment Order, the FMV Order, and the argument and papers filed in this case, this Court makes the following findings of fact and conclusions of law:

I.

FINDINGS OF FACT

1. The facts set forth in the Summary Judgment Order are hereby incorporated herein as if fully set forth.

2. The amount of indebtedness owed on the subject note on the date of the trustee's sale was \$16,707,947.47.

3. The Property was sold at a non-judicial trustee's sale on February 29, 2012 to a non-party for a cash bid in the amount of \$2,640,001.00.

4. On February 29, 2012, the date of the trustee's sale, the fair market value of the Property was \$5,867,500.00.

5. After providing Defendants credit for the fair market value of the Property on the date of the trustee's sale (\$5,867,500.00), the deficiency amount owed by Defendants to Plaintiff as of February 29, 2012 was \$10,840,447.47.

6. Pursuant to the loan documents, the default interest rate is fifteen percent per annum, which results in a per diem interest amount of \$4,516.85.

7. From February 29, 2012 until June 23, 2016, the accrued interest on the debt was \$7,118,555.60 ($\$4,516.85 \times 1576$ days).

III.

CONCLUSIONS OF LAW

1. Prior to the award of a deficiency judgment, NRS 40.455 requires that a hearing be conducted under NRS 40.457.

2. Pursuant to NRS 40.459, after a hearing is held pursuant to NRS 40.457, "the court shall award a money judgment against the debtor, guarantor or surety who is personally liable for the debt. The court shall not render judgment for more than: (a) The amount by which the amount of the indebtedness which was secured exceeds the fair market value of the property sold at the time of the sale, with interest from the date of the sale; (b) The amount which is the difference between the amount for which the property was actually sold and the amount of the indebtedness which was secured, with interest from the date of sale...whichever is the lesser amount."

III.

ORDER AND JUDGMENT

Based upon the foregoing and previous orders of the Court:

IT IS HEREBY ORDERED AND ADJUDGED that, taking the amount of the indebtedness on the date of the trustee's sale (\$16,707,947.47) and providing Defendants credit for the fair market value of the Property on the date of the trustee's sale (\$5,867,500.00), the amount of the deficiency owed by Defendants to Plaintiff on February 29, 2012 was \$10,840,447.47.

IT IS FURTHER ORDERED AND ADJUDGED that as of June 23, 2016, the deficiency amount was **\$17,959,003.07**, comprised of principal in the amount of **\$10,840,447.47** and accrued interest in the amount of **\$7,118,555.60**, which was calculated pursuant to a default

1 interest rate of fifteen percent per annum. That deficiency amount shall accrue interest at the per
2 diem rate of \$4,516.85 until judgment is entered.

3 **IT IS FURTHER ORDERED AND ADJUDGED** that judgment is entered in favor of
4 plaintiff Branch Banking and Trust Company and against Defendants Pahrump 194, LLC, Todd
5 A. Nigro, Juli Koentopp, Michael E. Nigro, Margaret Nigro, Nigro Infinity Plus, LLC, Infinity
6 Plus, LLC, and Nigro Development, LLC, jointly and severally, in the amount of
7 **\$17,959,003.07.**

8 **IT IS FURTHER ORDERED AND ADJUDGED** that judgment shall accrue at the
9 contractual default rate of fifteen percent annum from the date of judgment until the judgment is
10 paid in full.

11 **IT IS FURTHER ORDERED AND ADJUDGED** that Plaintiff is entitled to reasonable
12 attorneys' fees and costs in the amount to be determined by this Court. If Plaintiff seeks to
13 recover those fees and costs, it shall file a motion with appropriate documentation within 14 days
14 of entry of this judgment.

15 DATED: July 5, 2016.

16 
17 UNITED STATES DISTRICT JUDGE

HOLLAND & HART LLP
9555 HILLWOOD DRIVE, 2ND FLOOR
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1 **CERTIFICATE OF SERVICE**

2 Pursuant to Nev. R. Civ. P. 5(b), I certify that on June 23, 2016, I served a true and
3 correct copy of the foregoing **FINDINGS OF FACTS, CONCLUSIONS OF LAW, AND**
4 **JUDGMENT** was served on counsel through the Court's electronic service system as follows:

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12 /s/ Yalonda Dekle
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